SALES—DELIVERY—PASSING OF TITLE.—Plaintiff sued the defendant to recover possession of two carriages sold to the latter to be paid for on delivery. The defendant failed to pay as agreed, but the plaintiff allowed him to keep possession of the carriages and use them; being influenced so to do, by the promises of the defendant to pay later. The defendant having failed to keep any of these promises, the plaintiff sued to recover possession of the goods. *Held,* where a sale is for cash on delivery and the seller delivers the goods but the buyer fails to pay, the right of property does not pass with the possession; but, if the seller is tardy or negligent in asserting his right to retake the property, the delivery is absolute and title passes. *Frech* v. *Lewis,* (1907), — Pa. —, 67 Atl. Rep. 45.

There seems to be some difference of opinion among the courts regarding the passing of title in such cases. In the principal case, STEWART, J., says: "In some jurisdictions the right of property is held to pass with delivery, unless at the time the right to retake is expressly declared by the seller. We have not gone so far. Our cases proceed on the theory that until payment has been made, or waived, the contract remains executory, and that delivery in such cases is not a completion of the contract, except as an intention to so regard it be implied from the circumstances attending." In support of the rule were cited *Leedom* v. *Philips,* 1 Yeates 527; *Bowen* v. *Burk,* 13 Pa. St. 146; *Backintoss* v. *Speicher,* 31 Pa. St. 324; *Mackaness* v. *Long,* 85 Pa. St. 158. In *Smith* v. *Lynes,* 1 Selden 41, the court held that the delivery of goods without exacting payment raised a presumption that the delivery was absolute; and that the vendor is presumed to have abandoned the security he had provided for the payment of the purchase money, and to have elected to trust the personal security of the vendee. To the same effect are *Martin* v. *Wirts,* 11 Ill. App. 567; *Hammett* v. *Linneman,* 48 N. Y. 399; *Parker* v. *Baxter,* 86 N. Y. 586. In the principal case, it seems that the burden is on the defendant if sued in replevin, to show that the condition of payment was waived; while, in the other cases, it is on the plaintiff to rebut the presumption of waiver.

SALES—PASSING TITLE—RESCISSION—FRAUD.—The plaintiffs sued in detinue to recover a mule from the purchaser from their vendee. The latter, by means of misrepresentations as to his personal identity, induced the plaintiffs to sell to him, and put him in possession of the mule, giving the plaintiffs his notes together with a mortgage on the property sold, to secure them. The defendant was a bona fide purchaser for value. *Held,* that where plaintiffs intended that title should pass, although induced to make the sale by the fraudulent representations as to the buyer's identity, plaintiffs were not entitled to recover the mule from the bona fide purchaser of the buyer because of such fraud. *Hickey* v. *McDonald Bros.* (1907), — Ala. —, 44 So. Rep. 201.

The principal case is supported by some authority, but the weight of authority and principle seem to be against it. In *Edmunds et al.* v. *Merchants' Despatch and Transportation Company,* 135 Mass. 283, it was held that if a person fraudulently representing himself to be another, buys, in person,

goods of the plaintiff, the property in the goods passes to him, and the seller cannot maintain an action against a common carrier to whom the carriage of the goods is entrusted for delivery to the swindler. The court drew a distinction between this case and the case where a person falsely represents himself to be buying for a third person. In the latter case, the court thought that, as there was no contract with the third person by reason of the want of authority in the agent, and, as the swindler did not intend to contract for himself, there necessarily could not be a contract with any one, and, therefore, no title could pass. To sustain the passing of title where the swindler pretended to act for himself, the court quoted Lord CAIRNS in *Cundy* v. *Lindsay,* 3 App. Cas. 459, as follows: "If it turns out that the chattel has come into the hands of the person who professed to sell it, by a de facto contract, that is to say, a contract which has purported to pass the property to him from the owner of the property, there the purchaser will obtain a good title." The facts in *Cundy* v. *Lindsay* were these: One Blenkarn negotiated for the purchase of goods from the plaintiffs by correspondence, signing his letters "Blenkiron & Co.," and giving his address as "37 Wood street, Cheapside." There was a reputable firm doing business in the immediate vicinity under the firm style of "W. Blenkiron & Co." The plaintiffs sent goods to the swindler at his own address, thinking they were selling to the reputable firm. The defendants were innocent purchasers from the swindler and, being sued for the value of the goods, the court held no title had passed to Blenkarn, and therefore defendants had none. While Lord CAIRNS did use the words quoted in *Edmunds et al.* v. *Merchants' Despatch Company,* supra, yet he further on said: * * * "How is it possible to imagine that in that state of things any contract could have arisen between respondents and Blenkarn? Of him they knew nothing, and of him they never thought. With him they never intended to deal. Their minds never, even for an instant of time, rested upon him, and as between him and them there was no concensus of mind which could lead to any agreement or any contract whatever." In view of the holding, this case can hardly be considered as an authority for the decisions in either the principal case or the Massachusetts case. The court in the principal case also cited *Barker* v. *Dinsmore,* 72 Pa. 427; *McCrellis* v. *Allen,* 57 Vt. 505; *Alexander* v. *Swackhamer,* 105 Ind. 81; *The Peters Box and Lumber Co.* v. *Lesh,* 119 Ind. 98. In *Barker* v. *Dinsmore,* supra, a man representing himself to be connected with Barker and Co., contracted with Dinsmore for wool for them to be consigned to them at Pittsburgh and paid for there. The court held that the ownership of Dinsmore was not divested. In *McCrillis* v. *Allen,* supra, the court held that, where the defendant falsely represented himself to be one of a firm of merchants, and thereby induced the sale to him of certain goods, no title passed and trover would lie for the conversion. In *Alexander* v. *Swackhamer,* supra, it was held that, where one fraudulently represents himself to be a member of a firm, and induces the owner of goods to part with them in that belief, the title is not divested and an innocent purchaser is liable for the value of the property. In *The Peters Box and Lumber Co.* v. *Lesh,* supra, the court held that where one fraudulently represents that he is agent of a third party, and thereby purchases goods from another, who intends to vest

the title in the supposed principal, the sale is void, vests no title in the imposter, and he cannot by a subsequent sale confer title upon another. These cases are undoubtedly authority on the proposition that no title passes where one falsely represents himself to be acting for another, yet it can hardly be said that they uphold the court in its decision in the principal case, namely, that where a person represents himself to be another and causes a third person to sell him goods in that belief, title thereby passes.

STATES—BOUNDARIES OF STATES SEPARATED BY NAVIGABLE RIVERS.—The state of Tennessee, claiming certain lands in the deserted bed of the Mississippi river, brought suit to recover them. The defendants, who claimed to own the lands in fee, pleaded that they were within the state of Arkansas. The right of the state to recover depended upon the location of the boundary line between Tennessee and Arkansas. *Held,* that the boundary line was a line equidistant from the visible, defined banks of the river and not the middle of the channel of commerce; and that the state might recover the lands. *State* v. *Muncie Pulp Co. et al.* (1907), — Tenn. —, 104 S. W. Rep. 437.

The question as to the exact location of the boundary line between two adjoining states when the two jurisdictions are separated by a navigable river has frequently been presented to the courts and has received conflicting decisions. The cession and enabling acts and the constitutions of the states bounded on the navigable rivers, in describing that boundary, use either the term "middle of the stream" or "middle of the channel." The courts generally use these terms interchangeably, but differ in their interpretation of the phrases. In *Dunleith, etc., Bridge Co.* v. *Dubuque,* 55 Iowa 558, it is said that in questions of boundaries, the term "channel" is generally used to designate the depression of a bed below permanent banks, forming a conduit along which waters flow. Other cases have adopted almost the same language in defining the term and hold that the line of demarcation of the two jurisdictions is a line midway between the permanent, visible banks. *Cessill* v. *The State,* 40 Ark. 501; *Missouri* v. *Kentucky,* 11 Wall. 395; *Jones* v. *Soulard,* 24 How. 41. The opposite view is definitely set forth in a frequently cited Illinois case, in which it is said that the word "channel" indicates the line of deep water which vessels follow. *Buttenuth* v. *St. Louis Bridge Co.,* 123 Ill. 535. Two leading cases cited in the principal case as sustaining its holding do not directly decide this question, but, still, cite the *Buttenuth* case and inferentially approve it. *St. Louis* v. *Rutz,* 138 U. S. 226; *Nebraska* v. *Iowa,* 143 U. S. 359. See, also, *State* v. *Keane,* 84 Mo. App. 127; *Bridge Co.* v. *People,* 176 Ill. 267; *The Sarah,* 52 Fed. 233; *The Northern Queen,* 117 Fed. 906. The two opposed doctrines were elaborately investigated in *Iowa* v. *Illinois,* 147 U. S. 1, and the rule laid down that the boundary between two states is the middle of the main navigable channel of the river. This decision was based on the rules of international law, on a construction of the acts creating the boundaries in question, and on the equitable policy of dividing the control of navigation. The principal case avowedly rejects the doctrine of *Iowa* v. *Illinois* because the reasoning of the latter case is based upon the law of nations, while that of the opposing cases is based upon a construction